

REMEDATION AND REDEVELOPMENT (RR) NEWS FROM WISCONSIN DNR

August 17, 2005

CHANGES TO CHAPTER NR 169 ARE NOW IN EFFECT

Revisions to the Dry Cleaner Environmental Response Program rules, Chapter NR 169, became effective on **August 1**. Some of the important changes are summarized here.

- Ineligible expenses include: 1) costs incurred by local governments without agent status, 2) unnecessary or unreasonable costs, 3) fees, and 4) document delivery.
- Bidding requirements include: 1) at least three and no more than six bids, 2) bids must be submitted to DNR at the same time they are submitted to the owner/operator, 3) bids must be sealed, and 4) consultants serving as agents must comply with bidding requirements.
- Site investigation reimbursement may include: 1) Site assessment scoping (defining that a discharge has occurred, 2) a workplan from the consultant that has a site investigation contract, 3) at least four rounds of groundwater monitoring, 4) up to three interim site investigation payments of at least \$15,000 each, and 5) no more remedial action options reports.
- Remedial action bidding must include: 1) a determination of technical & economic feasibility, and *may* include 2) reimbursement of costs to complete the winning bid, 3) cost estimates for pilot tests, and 4) costs to closure.

In addition, these statutory changes are reflected in the revised rule:

- A new deadline - potential claim notification forms must be received by August 30, 2008, and
- Reimbursement of third party costs up to \$15,000 for site discovery.

For more information about DERF, please see <http://dnr.wi.gov/org/aw/rr/financial/dryclean.html>.

NEW GUIDANCE ON INSTITUTIONAL CONTROLS AND FEWER CONDITIONAL CLOSURES

The RR Program has been granting several types of conditional case closures for situations such as moderately incomplete site investigations or remedial actions, when monitoring wells remain to be abandoned, when a soil pile or other waste still needs to be removed and when a fee (usually a GIS Registry fee) has not been included with the closure request.

Another type of conditional closure had been granted when a deed restriction was required due to residual contamination, but the restriction had not yet been recorded with the Register of Deeds. This particular type of conditional closure, however, caused problems and has now been discontinued. Too often, responsible parties failed to record the deed restriction after DNR sent a conditional closure letter. This change has been included in revisions to our *Guidance on Case Closure and the Requirements for Institutional Controls and VPLE Environmental Insurance* (RR-606). The revised guidance is now on the web at: <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR606.pdf>.

When RR staff receive case closure requests where a deed restriction is needed, we now respond with a denial letter explaining that a draft deed restriction must be sent to our project manager for review and that a copy of the final, properly-recorded deed restriction must be received before we send a closure letter to the responsible party. Appendix 2 of the revised guidance explains how to draft deed restrictions and includes submittal checklists, new templates for deed restrictions, a sample maintenance plan and an inspection log. We've also posted sample maintenance plans and inspection logs in pdf format on our Resources for Environmental Professionals web page at <http://dnr.wi.gov/org/aw/rr/technical/index.htm>, and provided the template for deed restrictions there in WORD® format.

Since we've found that maintenance plans have rarely been attached to deed restrictions, we now recommend a reference to the maintenance plan in the deed restriction, including the title, date and location of the plan. When the maintenance plan contains only a few requirements, we recommend that they be summarized within the deed restriction. After we receive and have approved all the required information, we will send the closure letter and post the final, recorded deed restriction and the maintenance plan on the GIS Registry of Closed Remediation Sites, available at: <http://dnr.wi.gov/org/aw/rr/gis/index.htm>

NEW ON THE WEB – SUCCESS STORIES

The RR Program has updated its "Accomplishments and Successes" web page, creating a new section for cleanup and redevelopment success stories. It includes a chart summarizing the financial and liability tools employed at each success story. The narrative for these stories includes more information about the tools that were used. To see the new web pages and some examples of successful redevelopment projects, please see <http://dnr.wi.gov/org/aw/rr/cleanup/sstories.htm>.

SOME GIS FEE PAYMENTS STILL GOING ASTRAY

One way to ensure delay of your case closure review is to send your GIS fees to DNR's technical project manager instead of to our regional program assistant that handles fees. Please remember to do the following when paying GIS fees:

- ☐ make the check payable to "Wisconsin DNR",
- ☐ send the check to the RR Program Assistant for the appropriate DNR region http://dnr.wi.gov/org/aw/rr/technical/lists/contact_rr.htm#anchor106133
- ☐ include the site name and BRRTS i.d. number in the "memo" line of the check, and
- ☐ if the case is under Commerce jurisdiction, attach a copy of the first page of the Commerce closure form to the check.

Confirmation of fee payment can be found in the Bureau for Remediation and Redevelopment Tracking System (BRRTS) at <http://botw.dnr.state.wi.us/botw/Welcome.do>. Look in the table titled "Actions" for codes 700 and 710, Date (Groundwater or Soil) Registry Fee Received.

EPA OFFERS MORE AVIALL INFORMATION

EPA's Office of Site Remediation Enforcement has developed a web link to their Frequently Asked Questions regarding the Supreme Court's decision in Cooper v. Aviall. The link is: <http://www.epa.gov/compliance/resources/faqs/cleanup/superfund/aviall-faqs.html>.

EPA OFFERS TECHNOLOGY UPDATES

EPA's latest edition of their *Technology Innovation News Survey* has been posted to their CLU-IN web site with information on markets, demonstrations and feasibility studies, research and other news relevant to those interested in technology development. The latest survey is available at: <http://www.clu-in.org/products/tins/>.